

**Juniper Ridge Landfill  
Department Order #S-020700-WD-W-M**

**Appeal to the Board of Environmental Protection**

**Joint Appeal and Request for Public Hearing  
(dated October 13, 2010)  
by Municipal Review Committee, Inc.  
and  
Penobscot Energy Recovery Company, LP**

October 13, 2010

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Susan Lessard, Chair  
Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Re: **Notice of Appeal and Request for Public Hearing – Solid Waste Order for a Minor Revision for Juniper Ridge Landfill #S-020700-WD-W-M.**

Dear Chair Lessard:

The Municipal Review Committee, Inc. ("MRC") and Penobscot Energy Recovery Company, LP ("PERC") hereby appeal the Department of Environmental Protection's ("DEP") final Solid Waste Order Minor Revision #S-020700-WD-W-M ("Order") filed September 13, 2010, allowing Juniper Ridge Landfill ("JRL") to increase its intake of new municipal solid waste ("MSW") bypass (hereinafter "MSW bypass")<sup>1</sup> for the remaining lifetime of the facility. The Order is attached hereto as Exhibit A. MRC and PERC appeal the Order because: (1) the Order exceeds the scope of the DEP's statutory authority; (2) the findings in the Order are not substantiated by the record and are arbitrary and capricious; (3) the applicant failed to meet its burden to satisfy the relevant licensing criteria; (4) the exclusion of MSW from JRL's underlying annual 310,000 ton MSW limit is unjustified by the record; (5) the Order is anticompetitive and violates fundamental fairness; and (6) the Order violates the Maine Legislature's solid waste management hierarchy. MRC and PERC respectfully request a public hearing on this important matter.

**I. Aggrieved Party Status**

MRC is a non-profit corporation organized under Maine law. It consists of over 175 member municipalities, which transport MSW to the waste-to-energy facility owned and operated by PERC in Orrington, Maine. MRC's member towns and cities collectively own a minority interest in PERC. This ownership interest, and its existing disposal contracts, provides MRC communities with a direct financial and strategic interest in PERC. Therefore, any adverse impacts to PERC also impact MRC and its members.

---

<sup>1</sup> Although the term "MSW" is defined pursuant to 06-096 CMR 400 § 1(NNN), and the term "Bypass" is defined pursuant to 06-096 CMR 400 § 1(I), the Maine Solid Waste Rules do not define the term "MSW bypass." However, DEP in its Order characterized the MSW for the soft layer as "MSW bypass." We disagree that this waste satisfies the definition of "bypass," however; for purposes of this appeal PERC and MRC use the phrase "MSW bypass" to reflect the terminology used by DEP in the Order.

PERC is a waste-to-energy facility that was founded in 2001. PERC is located in Orrington, Maine and services hundreds of towns and cities in Maine. PERC has approximately 75 employees.

An aggrieved person may appeal to the Board of Environmental Protection ("Board") for review of a licensing decision by the DEP Commissioner. See 06-096 CMR 2 § 24(B)(1). "Aggrieved person" means "any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision." Id. at § 1(B). As explained more fully below, the DEP's approval of JRL's increase in MSW intake through the artifice of "MSW bypass" flips Maine Legislature's solid waste management hierarchy on its head and allows PERC's competitor, Maine Energy Recovery Company ("Maine Energy"), to process more out-of-state waste to the detriment of other Maine waste-to-energy facilities.

Furthermore, this permit revision directly injures PERC and MRC in at least three ways: (1) it provides a competitive advantage to Maine Energy by increasing its limit of "MSW bypass" above the current limit of 310,000 tons per year to the detriment of PERC and MRC; (2) it calls into question the overall capacity at JRL for wastes contractually required to be accepted by PERC; and (3) it calls for "MSW bypass" to be used as the soft layer at JRL's Cell 6 as well as its future landfill cells instead of Front End Processing Residue ("FEPR"), ash, and other waste materials supplied by PERC that was previously used as the soft layer.

**a. Increasing JRL's MSW Limit from Maine Energy Grants Maine Energy a Competitive Advantage Over PERC.**

Establishing Maine Energy as the sole provider of such MSW for the soft layer through the permitting process is not only inappropriate, but it also provides Maine Energy with a competitive advantage to PERC's detriment. Not only is Maine Energy guaranteed to be the supplier of this MSW for the soft layer but DEP has characterized the Maine Energy supplied MSW to be used as the soft layer as "MSW bypass" so that it does not count against Maine Energy's and JRL's current MSW limit. Therefore, this permit revision grants Maine Energy with an unfair direct competitive advantage over PERC.

**b. Increasing the Amount of MSW Maine Energy can Send to JRL Calls Into Question the Volume of MSW Remaining for PERC.**

Importantly, PERC is in a contractual relationship with Casella Waste Systems ("CWS"), the operator of JRL, to accept and dispose of PERC's residuals at that landfill. However, the Order allows an increase in MSW from Maine Energy to enter JRL beyond its current limit. This raises questions about both JRL's ultimate capacity and whether there will be enough capacity for PERC and other facilities to dispose of their residual wastes at JRL.

c. **The Switch From PERC Supplied FEPR and Other Materials for the Soft Layer to Maine Energy Supplied MSW Negatively Impacts PERC.**

The financial status of PERC is affected by the availability of landfill space, including at JRL, to dispose of its residual material. Before JRL's permit was revised, PERC supplied residuals appropriate for soft layer placement to JRL. These material used included FEPR and ash. However, JRL's permit revision calls for the use of MSW from Maine Energy instead of FEPR and other materials from PERC. This departure from other residual materials solely to "MSW bypass," coupled with the directive that such bypass be supplied by Maine Energy, is not only unjustified and unsubstantiated by the current record, but because of the precedential nature of the Order may have a direct negative financial impact on PERC at future landfills as well.

**II. Basis for the Appeal**

Prior to the underlying license being revised, MSW bypass limitations applied to both Maine Energy and JRL,<sup>2</sup> whereby a maximum of 310,000 tons of MSW were to be managed between the two facilities annually. See License #2-020700-WD-N-A. However, the Order now allows an additional 31,440 cubic yards of "MSW bypass" to be deposited by Maine Energy directly into JRL's current Cell 6 for use as soft layer. See Order at page 7, Section 4. These 31,440 cubic yards are separate and exempt from the historical 310,000 ton annual limit. See *id.* In addition, the Order allows "MSW bypass" to be utilized as soft layer in every new cell constructed in the future. See Order at page 7, Section 3. The Order does not set a definite limit on the amount of new "MSW bypass" available for those new cells which Maine Energy will send to JRL for use as soft layer. See *id.* Moreover, these future undefined amounts will also fall outside the annual 310,000 ton maximum. See *id.*

MRC and PERC appeal the DEP's issuance of this Order for the following reasons. First, DEP's Order exceeds the scope of its statutory authority because this permit revision warrants a license amendment and inappropriately expands the definition of bypass. Second, DEP's conclusion that MSW suitable and preferred material for the soft layer is unsupported by substantial evidence in the record and is arbitrary and capricious. Third, the State Planning Office ("SPO"), as the applicant, failed to meet its burden to satisfy relevant licensing criteria. Fourth, the exclusion of MSW from calculation in Maine Energy's and JRL's annual 310,000 limit is unjustified by the record. Fifth, the Order is anticompetitive and violates the fundamental fairness by displacing PERC supplied residuals for JRL's soft layer and granting Maine Energy the sole right to provide MSW for the soft layer of cells at JRL. The Order also violates the State's solid waste management hierarchy by causing MSW to be diverted from waste-to-energy facilities to JRL for disposal.

**A. DEP's Order Exceeds the Scope of Statutory Authority Because this Permit Revision Warrants a License Amendment and Exceeds the Definition of Bypass**

---

<sup>2</sup> The original license pertained to Maine Energy, JRL and Pine Tree Landfill ("PTL"); however, PTL ceased accepting waste on December 31, 2009.

What has been proposed by the applicant as “minor revision” should be a license amendment. Pursuant to Department rules, an amendment

means a modification to a license that would permit a solid waste facility to **significantly increase capacity** of the facility; significantly alter the . . . **design, construction or operation** of the facility . . . to the extent that would require the Department to modify any findings with respect to any of the licensing criteria. Amendments do not include minor revision.

06-096 CMR 400 § 1(I) (emphasis added).

The proposed minor revision qualifies as a licensing amendment in two respects. First, switching the type of material used in the soft layer alters the operation, construction and/or design of the landfill from what has been utilized by JRL in the past. Second, the effect of the Order is to significantly increase the capacity of Maine Energy’s facility and the use of MSW vis-à-vis other materials at JRL. The addition of 31,440 cubic yards of such MSW bypass just for Cell 6, plus additional MSW bypass for all future cells – **in yet to be determined amounts** – clearly and significantly increases the previous capacity MSW limits for Maine Energy and JRL.

Finally, the Order inappropriately expands the definition of bypass.<sup>3</sup> The intent of the definition of bypass is clear: solid waste may bypass disposal at a facility where that facility is experiencing maintenance or process limitations. Although the definition allows waste to bypass facility disposal “for any other reason,” that definition must be read in the context of the Solid Waste management regulations. It cannot and should not be exploited as an end-around to expand the amount of MSW to be landfilled at a specific facility. Here, the DEP is setting the precedent whereby an applicant can significantly expand capacity of MSW at its facility by defining it as “bypass” and going through the minor revision process. This is an arbitrary and capricious distortion of the definition of “bypass” and abuse of the minor permit revision process.

***B. The Order, Including DEP’s Selection of MSW Bypass as Appropriate Soft Layer Material, is Unsupported by Substantial Evidence in the Record and is Arbitrary and Capricious.***

The record on appeal to the Board is the administrative record prepared by the DEP in its review of the application. See 06-096 CMR 2 § 24(B)(4). PERC performed a record review and confirmed with the DEP the record for this Order. After conducting such review it is clear that there is no evidence in the administrative record supporting the DEP’s decision to use “MSW bypass” as the soft layer at JRL’s Cell 6 and future cells versus other residual materials.

---

<sup>3</sup> Bypass means any solid waste that is destined for disposal, processing, or beneficial use at a solid waste facility, but which cannot be disposed, processed, or beneficially used at the facility because of malfunction, insufficient capacity, inability of the facility to process or burn, down-time or any other reason. 06-096 CMR 400 § 1(V).

The Order states “MSW bypass” is the “best waste for use in the protective soft layer of landfills required by” DEP regulations.<sup>4</sup> Order at page 6, Section 3. It also states that “Staff recommend that MSW bypass be the primary waste used . . . because at other secure landfills in Maine MSW has been found by staff to be the best material for the soft layer.” *Id.* Despite these findings and conclusions in the Order, the administrative record itself is devoid of supporting materials or analysis. For example, it contains no reports or recommendations regarding the use of “MSW bypass” as soft layer elsewhere in the State, nor any staff findings on the “best” qualities of such “MSW bypass.” In addition, although the Order asserts there are negative drawbacks from using other licensed waste streams such as FEPR, ash, contaminated soils and bark as soft layer, the record is similarly devoid of any documented support for these conclusions. *See id.*

In contrast to DEP’s findings, MRC and PERC are concerned that the contents of unprocessed MSW could have the negative effect of piercing the primary liner as well as impacting the leachate collection system in Cell 6 and in future cells. The Order contains no physical or performance specifications for “MSW bypass” nor does it contain any requirements that JRL sort, screen, process and/or inspect “MSW bypass” prior to its placement as soft layer, consistent with the purpose of soft layer established in Maine’s Solid Waste Rules.

An application for a minor revision must be submitted for any proposed alteration where, in the DEP’s judgment, there is potential for proposed alterations to “impact the environment, public health or welfare, or to create a nuisance.” 06-096 CMR 400 § 3(B)(2)(b). The DEP concluded that the “use of MSW bypass as the protective layer in newly constructed cells at [JRL]” will not impact the environment, public health or welfare nor create a nuisance. Order at page 8, Section 6. Yet, there is no evidence that these criteria were evaluated. The Order itself provides very weak justification for the decision to use “MSW bypass” for the soft layer at JRL, which is made all the more tenuous by the lack of documented technical information supporting its conclusions. Its dismissal of other waste streams suggests that materials approved for soft layer placement in prior cells will eventually cause problems with existing leachate collection systems, which itself raises troubling questions. Without proper technical support in the administrative record to support its issuance of the Order, the DEP’s granting of the Order does not meet its own licensing criteria and makes its decision arbitrary and capricious, an abuse of discretion, and not grounded in fact or law.

### ***C. SPO’s Application Fails to Meet Applicable Licensing Criteria.***

It is the applicant’s burden to affirmatively demonstrate that it will meet all of the applicable licensing criteria. 06-096 CMR 2 § 11(F). An applicant must also prove by a

---

<sup>4</sup> The DEP cited 06-096 CMR 401 § 2(D)(4)(a)(vii) as its basis for finding that “MSW bypass” soft layer best meets the standards for protective systems. The regulation states in its entirety:

A protective system must be provided for the primary liner and the leachate collection system. Protective systems must consider freeze/thaw effects from liner and leachate collection system exposure to climatic effects, erosion, and puncture during repairs or waste placement. Protective systems during operations may consist of select waste such as paper mill sludge and tire chips, provided the select waste is permitted for acceptance at the landfill.

preponderance of the evidence that applicable licensing criteria are satisfied. *Id.* In this case, SPO bears the burden to demonstrate that its application for a minor revision would meet the standards of 06-096 CMR 400 § 3(B)(2)(b) -- that it would neither impact the environment, public health or welfare, or create a nuisance -- and 06-096 CMR 401 § 2(D)(4)(a)(vii) -- that "MSW bypass" is the best material for use as protective soft layer. SPO failed to meet either of these requirements.

On December 10, 2009, SPO, on behalf of JRL, submitted its application for a minor revision to License #S-020700-WD-N-A. It described this application as a modification of an application it had made to the DEP in October of 2006, which had never been formally acted upon by the Department. *See* 2009 Application at page 4 (attached hereto as Exhibit B). It attached a copy of the 2006 filing in support of its new application and provided three paragraphs describing its request to use "MSW bypass" as soft layer material in newly constructed landfill cells. *See id.*

Although SPO stated that soft layer materials such as FEPR, ash, contaminated soils and bark have been used as soft layer, "experience has proven that those materials eventually . . . impede leachate flow to drainage systems within the landfill." *Id.* It also stated that "[i]nvestigations undertaken with the cooperation of MDEP staff have resulted in the recommendation of utilizing MSW for the required soft layer in newly constructed landfill cells rather than traditional materials." *Id.*

Despite referencing both "experience" and "investigations" with the DEP, SPO attached no supporting documentation demonstrating "MSW bypass" as being the recommended choice for soft layer material. Further, as mentioned previously, based upon file reviews undertaken by MRC and PERC representatives, we have found no evidence of such investigations or demonstrations of "experience" in the administrative record upon which to support the findings and conclusions in the Order.

Because SPO never provided any documentation supporting the technical basis for the selection of "MSW bypass" as soft-layer and because it has failed to demonstrate why "MSW bypass" would not impact the environment, public health or welfare, or create a nuisance, SPO has failed to meet its burden to demonstrate that it has met the applicable licensing criteria.

***D. The Exclusion of "MSW Bypass" From the Annual 310,000 Ton Allowance is Not Supported by the Administrative Record or the Application.***

Department license #S-020700-WD-N-A limits the amount of MSW managed between Maine Energy and JRL to 310,000 tons per year. *See* License #2-020700-WD-N-A at § 16(C). As explained in the Order, the intent of the 310,000 tons annual year limit was, in part, to address the possibility that Maine Energy may accept more MSW than it could process and incinerate, resulting in an automatic, ongoing bypass of MSW to JRL. *See* Order at page 6, Section 3. As reflected in the Order, the owner of Maine Energy and operator of JRL, CWS, stated in its 2006 application that curtailment of incoming MSW to ensure that the 310,000 tons per year limit was not exceeded could adversely affect power production at Maine Energy. *See id.* at page 4,

Section 2; see also 2006 Application at page 4 (attached hereto as Exhibit B). The request by CWS to increase the limit to 325,000 tons per year was amended to retain the 310,000 tons per year limit at Maine Energy and JRL while excluding the amount of MSW required for the soft layer from this limit. See Order at pages 4-6, Sections 2-3; see also 2009 Application at page 4.

Neither the application submitted by SPO nor the Department record contain sufficient information to substantiate the proposition that power production at Maine Energy would be adversely affected if the "MSW bypass" required for the soft layer at JRL were included within the 310,000 ton per year limit. Moreover, the license mandated that the "MSW bypass" sent to JRL had to be from the following Maine-based sources: PERC, Maine Energy and "other MSW incinerators in Maine." See License #2-020700-WD-N-A at § 16(A). In contrast, the Order recommends that CWS schedule the delivery of MSW required for the soft layer directly from its Maine *transfer stations*. See Order at page 6, Section 3 (emphasis added). Therefore, the sources of waste listed in the Order differ substantially from those specifically allowed in the underlying license, in violation of Section 16(A).

The current economic climate, and the increase by businesses, communities and individuals to reduce, reuse and recycle waste, has already diminished the amount of available MSW for incineration or landfilling. Even if Maine-generated MSW is used for the soft layer, as a practical matter Maine Energy will still be able to bring in out-of-state waste to backfill its handling capacity up to the 310,000 ton annual limit. The administrative record contains insufficient evidence to support the DEP's conclusion that the MSW accepted at JRL should be excluded from the 310,000 limit placed on Maine Energy. Further, JRL does not support a deviation from the current sources of MSW allowed in Section 16(A) of the underlying license, and establishes bad public policy which promotes the importation of out-of-state waste.

#### ***E. The Order Violates Fundamental Fairness and is Anticompetitive***

The Order violates fundamental fairness and is anticompetitive for the following reasons: (1) the Order grants Maine Energy the ability to provide, at the expense of other waste-to-energy facilities, including PERC, MSW bypass for the soft layer of cell #6 and future cells; (2) the Order displaces the use of other materials for the soft layer at JRL at the expense of PERC and other waste-to-energy facilities; and (3) the Order puts PERC at a competitive disadvantage vis-à-vis Maine Energy because it increases the amount of MSW that Maine Energy can send to JRL, increasing the amount of out-of-state waste Maine Energy can accept.

Any one of these facts alone would violate fundamental fairness; however, taken collectively, this Order clearly violates fundamental fairness and distorts free market competition. The Order mandates that the soft layer material for cell #6 and future landfill cells at JRL be filled with MSW versus other materials that have previously been used for the soft layer. This switch, coupled with the fact that the Order allows Maine Energy to exclusively supply the MSW for the soft layer material violates fundamental fairness and is anticompetitive. Furthermore, the close relationship between Casella, the owner of Maine Energy and operator of JRL and the SPO as well as the fact that this permit is being issued as a "minor revision" through an expansion of the definition of "bypass" so that the MSW is not included in Maine Energy's



and JRL's annual MSW limit raises additional fairness issues. The Order greatly benefits Maine Energy, one of only four Maine waste-to-energy facilities to the detriment of other such facilities including PERC and violates fundamental fairness.

### ***F. The Order Violates the State Solid Waste Management Hierarchy***

The State of Maine established a solid waste management hierarchy in 1989, pursuant to 38 M.R.S.A. § 2101. This hierarchy sets forth the State's "guiding principles" to be used in making solid waste management decisions. *Id.* It prioritizes the solid waste management activities in the State by ranking those types of activities in terms of preference, with the highest priority being reduction of generated waste, followed by the reuse of waste, and then recycling of waste, waste composting and waste processing (including incineration). The last and least favored element of the hierarchy is land disposal.<sup>5</sup> *Id.* The Order violates the State's hierarchy because it allows and promotes MSW to bypass waste-to-energy incinerators, without actually qualifying as certifiable MSW bypass, so that it is directly to landfills for use as soft layer. Despite land disposal being the option of last resort under Maine's hierarchy, the Order will result in more MSW being deposited in Maine's only state-owned landfill, rather than less.

In addition, the Order highlights the inherent conflict created by SPO owning and operating JRL while being the lead agency responsible for overseeing and managing Maine's long-term solid waste management strategy. The solid waste management hierarchy is arguably undermined by this relationship.

### **III. Evidence to be Presented**

The Order states that the DEP considered SPO's application with "its supportive data, staff review comments, and other related materials on file." Order at page 1. On appeal, MRC and PERC will demonstrate there was neither supportive data, staff review comments, nor related materials in the administrative record.

On appeal, MRC and PERC will show that SPO's application lacked any supporting data other than resubmitting its previous 2006 application material. Appellants will demonstrate that the 2006 application itself cannot be relied upon as "supportive material" since it never once mentioned the need for, nor the use of "MSW bypass" as soft-layer material for JRL. In fact, the

---

<sup>5</sup> 38 M.R.S.A. § 2101 sets forth the policy as:

It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste;
- B. Reuse of waste;
- C. Recycling of waste;
- D. Composting of biodegradable waste;
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and
- F. Land disposal of waste.

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

2006 filing offered very different reasons as to why "MSW bypass" was needed at that time. Moreover, although the 2009 application asserted "MSW bypass" was preferable for soft layer needs, it offered no technical support for such statements.

MRC and PERC will also provide evidence that the Order was not supported by the DEP's administrative record, since it contained "no staff review comments," nor any "other related materials on file" such as technical studies, reports or analysis. Ultimately, Appellants will demonstrate that there was nothing in the record providing a technical basis for the selection of "MSW bypass" as the "best material" for soft layer.

In particular, the testimony of Greg Louder, Executive Director of MRC, will describe how MRC, on behalf of both MRC and PERC, sought to discuss the application and Order with the DEP. He will describe how and when a copy of the record was obtained, and that its few contents failed to provide any technical basis for the selection of "MSW bypass" for soft layer. Moreover, he will testify that his conversations with DEP staff and regulators underscored the lack of a written record supporting the Order.

MRC and PERC also reserve the right to introduce evidence on the subject of current soft layer materials utilized at landfills, both in-state and out-of-state, in order to educate the Board on current landfill practices and to discuss those materials' properties and historical use as protective soft layer. Qualified witnesses may include Denis St. Peter, President of CES Inc. A professional engineer, Mr. St. Peter has over 20 years of civil and environmental experience. After spending 10 years working as an Environmental Engineer at Loring Air Force Base, Mr. St. Peter joined CES in 2000 as a Senior Project Engineer and Project Manager. Mr. St. Peter has been involved in the design, operation and closure of landfills within the State of Maine within the past twenty years.

In addition, MRC and PERC reserve the right to introduce evidence on the subject of the 310,000 ton annual limit. Qualified witnesses may include Michael Mains of Eden Environmental. Mr. Mains is qualified to testify on this subject as he has over 20 years experience in solid waste management, including establishing, directing or managing environmental compliance efforts for facilities engaged in the processing, incineration, disposal, recycling or beneficial reuse of waste materials. MRC and PERC also reserve the right to add to this list of potential witnesses.

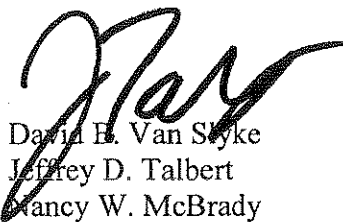
#### **IV. Remedy**

MRC and PERC are deeply troubled that SPO, on behalf of JRL, sought and received an order to increase "MSW bypass" at JRL that negatively impacts PERC and the State of Maine, based on an application and record that included little to no technical support. Similarly, MRC and PERC are concerned that the DEP granted this application without appropriately compiling an administrative record that supports and verifies "MSW bypass" as an appropriate material for soft-layer. The Order contains troubling language that implies that landfills currently lined with other types of waste streams, such as FEPR or ash, may be threatened. In addition, this Order is anticompetitive and violates fundamental fairness, characterizes an increase in the current

permitted limits for MSW at Maine Energy and JRL by inappropriately expanding the definition of "bypass" and undermines the State's solid waste management hierarchy. Because of the flaws with both SPO's underlying application and with the Order, MRC and PERC respectfully request that the Board:

1. Modify the Order (a) to remove all references relating to the suitability (or lack thereof) of other waste streams placed as soft layer material, including but not limited to FEPR and ash, to avoid implying that those landfills have historically used unsuitable materials; and (b) to remove all references to the use of MSW as a soft layer for future cells at JRL and Maine Energy as its sole supplier; and (c) such that the 31,440 cubic yard carve-out for Cell 6 is the only minor revision applicable to License #S-020700-WD-W-M<sup>6</sup>; and (d) so that the total "MSW bypass" used for soft layer at JRL's Cell 6 and at future cells be included within the 310,000 ton annual limit placed upon Maine Energy and JRL.
2. Remand the rest and remainder of the Order to the DEP for a full technical review and analysis, pursuant to the licensing amendment process, of (a) the appropriate materials for use as soft layer, including but not limited to "MSW bypass" ash and FEPR, and, if demonstrated to be the preferred material for soft layer purpose, (b) how utilization of that MSW might be timed for placement in new cells in conjunction with other approved waste streams (e.g., tire chips, ash, FEPR) in a manner which minimizes its use pursuant to the established State hierarchy.

Very truly yours,



David B. Van Slyke  
Jeffrey D. Talbert  
Nancy W. McBrady  
Counsel for MRC and PERC

Encl.

cc: Beth Nagusky, DEP  
Paula Clark, DEP  
Timothy Glidden, SPO  
George McDonald, SPO  
Brian Webber, CWS

---

<sup>6</sup> MRC and PERC do not oppose MSW bypass for soft layer in Cell 6, provided it is installed in a manner that is not dangerous to the liner and leachate collection system. This one-time allowance in no way concedes, waives or voids MRC and PERC's challenge to MSW bypass as the most appropriate soft layer material for future cells at JRL.

PRETI FLAHERTY  
Susan Lessard, Chair  
October 13, 2010  
Page 11

Greg Louder, MRC  
Peter Prata, PERC